No. 80-1681

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

VILLAGE OF HOFFMAN ESTATES, ILLINOIS, ET AL.,
Appellants,

v.

THE FLIPSIDE, HOFFMAN ESTATES, INC.,
AN ILLINOIS CORPORATION,
Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, IDAHO, INDIANA, KANSAS, LOUISIANA, MAINE, MARYLAND, NEBRASKA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OKLAHOMA, PENNSYLVANIA, TEXAS, UTAH, and WASHINGTON as AMICI CURIAE

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INTERESTS OF AMICI CURIAE

The interests of amici curiae are as follows:

The recent surge of drug abuse and the increased awareness of the health and economic perils posed by illicit drug use have caused the states and localities to focus on methods to eliminate this evil.

One focus of the effort has been directed toward "drug paraphernalia." However, initial efforts by the states and

localities themselves to draft constitutional laws controlling drug paraphernalia have generally been unsuccessful.

Accordingly, to assist the states and localities in this effort, the Federal Drug Enforcement Administration of the United States Department of Justice drafted and published in August 1979 the Model Drug Paraphernalia Act with prefatory notes and comments. See *Mid-Atlantic Accessories Trade Ass'n v. Maryland*, 500 F. Supp. 834, 841 (D. Md. 1980).

Amici are states which have enacted statutes based on the "Model Drug Paraphernalia Act" ("Model Act"). All are vitally concerned with coping with the concomitant problems of the use of drug paraphernalia by adults and children alike and the manufacture and distribution of drug paraphernalia by a multi-million dollar industry which exists solely to promote and glamorize the illegal use of controlled substances.

Because similar language appears in the ordinance at issue in this case and the Model Act, amici are concerned that a decision by the Court in this case may adversely affect a decision on the constitutionality of the Model Act. More particularly, amici maintain that proper application of constitutional principles dictates that the "designed for use" standard as used in the Model Act definition of drug paraphernalia is not unconstitutionally vague.

SUMMARY OF ARGUMENT

The ordinance at issue in the case before the Court prohibits "any item, effect, paraphernalia, accessory or thing which is designed or marketed for use with illegal cannabis or drugs." The U.S. Court of Appeals for the Seventh Circuit in *Flipside, Etc. v. Village of Hoffman Estates*, 639 F.2d 373 (7th Cir. 1981), held the phrase "designed for use" in that ordinance to be unconstitu-

tionally vague. However, the "designed for use" standard is contained in many federal and state statutory schemes, including the Model Drug Paraphernalia Act enacted by twenty-one states, and has repeatedly been upheld by other federal courts. *See, e.g., The Casbah, Inc. v. Thone,* No. 80-2033 (8th Cir. June 8, 1981) and the cases cited therein; *United States v. Brunett,* 53 F.2d 219 (W.D. Mo. 1931) (26 U.S.C. § 5686). In each case, the context in which the "designed for use" standard is utilized is determinative of the constitutionality of the statute. In this respect the Model Act clearly provides a stronger framework for the "designed for use" standard than does the *Flipside* ordinance. The "designed for use" language as contained in the *Flipside* ordinance is different from that employed in the Model Drug Paraphenalia Act for the following reasons. The Model Act is structured so that an essential element of proof in each case is a showing of specific intent of the person charged. Furthermore, the Model Act contains guidelines to be used in determining whether an object is drug paraphernalia. *Flipside, Etc. v. Village of Hoffman Estates, supra,* 639 F.2d at 376, 386.

ARGUMENT

THE LANGUAGE "USED, INTENDED FOR USE, OR DESIGNED FOR USE" IN THE DEFINITION OF PROHIBITED DRUG PARAPHERNALIA IS NOT PER SE VAGUE AND IS CONSTITUTIONAL AS EXEMPLIFIED BY THE DECISIONS CONSTRUING THE MODEL DRUG PARAPHERNALIA ACT.

The Model Act has been the basis for many states,[1] as well as localities, in enacting drug paraphernalia

[1] There have been, to the knowledge of amici, at least 21 state legislatures (namely, Arkansas (Ark. Stat. Ann. § 82-2601 (y)), Colorado (Colo. Rev. Stat. §§ 12-22-501, et seq., as amended by 1981 H.B. 1117 to read: "Primarily designed and intended for use"); Connecticut (Conn. Gen. Stat. §§ 19-443, et seq.), Delaware (Del. Code tit. 16, §§ 4701(13), 4769 (a) (5), and 4771-75), Florida (Fla. Stat. §§ 893.145, 893.146, 893.147 and 893.12), Idaho (Idaho Code §§ 37-2701, 37-2034A, 37-2734B, and 37-2744 (a)

legislation.[2] The prefatory note to the Model Act declares, in part:

> "The Uniform Controlled Substances Act, drafted by the National Conference of Commissioners on Uniform State Laws, has been enacted by all but a handful of states. The Uniform Act does not control the manufacture, advertisement, sale or use of so-called "Drug Paraphernalia." Other state laws aimed at controlling Drug Paraphernalia are often too vaguely worded and too limited in coverage to withstand constitutional attack or to be very effective. As a result, the availability of Drug Paraphernalia has reached epidemic levels. An entire industry has developed which promotes, even glamorizes, the illegal use of drugs by adults and children alike. Sales of Drug Paraphernalia are reported as high as three billion dollars a year. What was a small phenomenon at the time the Uniform Act was drafted has now mushroomed into an industry so well-entrenched that it has its own trade magazines and associations." *Prefatory Note, Model Drug Paraphernalia Act* (U.S. Dept. of Justice, August, 1979).

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(7)), Indiana (Ind. Code § 16-6-8.5-5 and §§ 35-48-4-8.1 to 8.3), Kansas (Kansas 1981 H.B. 220), Louisiana (La. Rev. Stat. §§ 40:1031 to 40:1036), Maine (Me. Rev. Stat. tit. 17A, § 1111-A), Maryland (Md. Ann. Code, Art. 27, §§ 287A and 297), Nebraska (Neb. Rev. Stat. §§ 28-101, 28-431 and 28-439 to 28-444), Nevada (1981 Nev. Stats. Ch. 216), New Jersey (N.J. Stat. Ann. §§ 24:2146 et seq.), New Mexico (1981 N.M. Laws Ch. 31), North Carolina (1981 N.C. Sess. Laws Ch. 500), Oklahoma (Okla. Stat. tit. 63, §§ 2-101 et seq.), Pennsylvania (Pa. Stat. Ann. tit. 35, §§ 780-102(b), 780-113(a) (32-34), 780-113(i), 780-128(a) (I), 780-141.1), Texas (1981 H.B. 733), Utah (Utah Code Ann. §§ 76-10-1229 and 58-37a-1 et seq.), and Washington (Ch. 48 Wash. Laws 1981, codified in Ch. 6950 Rev. Code of Wash.), which have enacted statutes patterned after the Model Act.

[2] The problem of the proliferation of the sale and use of drug paraphernalia and attempts to control it was also the subject of considerable congressional interest. *See*, Drug Paraphernalia, Hearings Before the House Select Committee on Narcotics, Abuse and Control, 96th Cong., 1st Sess. (1979); Drug Paraphernalia, Hearings Before the Senate Judiciary Subcommittee on Criminal Justice, 96th Cong., 1st Sess (1980).

The constitutionality of the Model Act has been before a number of courts. The major contention in each case has been that the Model Act is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment to the United States Constitution. To date, however, the majority of the lower federal courts have concluded that the Model Act survives these constitutional challenges. The cases holding the Model Act or a modified version of it to be constitutional in its entirety are legion.[3] There are also a number of cases in which the courts have upheld legislation based on the Model Act after severing portions thought to be impermissible,[4] and cases involving

[3] *The Casbah, Inc., v. Thone*, No. 80-2033 (8th Cir. June 8, 1981); *Nova Records, Inc. v. Sendak*, 504 F. Supp. 938 (S.D. Ind. 1980), *appeal docketed*, No. 81-1107 (7th Cir. Jan. 22, 1981); *Tobacco Accessories and Novelty Craftsmen Merchants Ass'n v. Treen*, 501 F. Supp 168 (E.D. La. 1980), *appeal docketed, No. 80-3854 (5th Cir. Oct. 29, 1980); Mid-Atlantic Accessories Trade Ass'n v. Maryland, supra*, 500 F. Supp. 834 (D. Md. 1980), *appeal docketed*, No 80-1796 (4th Cir. Nov. 18, 1980); *Delaware Accessories Trade Ass'n v. Gebelein*, 497 F. Supp. 289 (D. Del. 1980); *World Imports, Inc. v. Woodbridge Township*, 493 F. Supp. 428 (D.N.J. 1980), *appeal docketed*, No. 80-1851 (3rd Cir. June 30, 1980), *appeal dismissed*, (3rd Cir. Sept. 17, 1980); *New England Accessories Trade Ass'n, Inc. v. City of Nashua*, Civ. No. 80-530-D (D.N.H. Dec. 8, 1980), *appeal docketed*, No. 80-1822 (st Cir. April 14, 1981); *Florida Businessmen for Free Enterprise v. City of Hollywood*, No. 80-6157-CIV-HCR (S.D. Fla. Aug. 29, 1980), *appeal docketed*, No. 80-5769 (5th Cir. Sept. 25, 1980); *Levas v. Village of Antioch*, No. 80-C-1574 (D.N. Ill. April 22, 1980), *appeal docketed*, No. 80-1675 (7th Cir. May 14, 1980) (definition of drug paraphernalia based on Model Act); *The General Stores, Inc. v. Jeff Bingaman*, No. Civil 81-0330 (D.N.M. June 12, 1981), *appeal docketed*, No. 81-1681 (10th Cir. June 23, 1981).

[4] *Heijira Corp. v. MacFarlane*, No, 80-2062 (10th Cir. May 5, 1981) (several the word "adapted" from the phrase "primarily adapted, designed and intended"); *New England Accessories Trade Ass'n v. Browne*, 502 F. Supp. 1245 (D. Conn. 1980) ("reasonably should know" standard severed), *appeal docketed*, No. 81-7142 (2nd Cir. Feb. 24, 1981); *Florida Businessmen for Free Enterprise v. Florida*, 499 F. Supp. 346 (N.D. Fla. 1980)

the Model Act which are pending decision.[5] It is worth noting that statutes not based on the Model Act have generally been held unconstitutional.[6]

(offense of possession, without mens rea of intent, severed), *appeal docketed*, No. 80-5813 (5th Cir. Oct. 9, 1980.)

But see the following cases holding particular provisions in statutes based on the Model Act impermissively vague and that the entire statute is unconstitutional. *Record Revolution No. 6, Inc. v. City of Parma*, 638 F.2d 916 (6th Cir. 1980), *vacated and remanded*, 49 U.S.L.W. 3882 (U.S. May 26, 1981) (No. 80-1507); *Lazy J., Ltd. v. Borough of State College*, Civ. No. 80-1167 (M.D. Pa. Jan. 30, 1981); *Back Door Records v. City of Jacksonville*, No. LR-C-80-314 (E.D. Ark. Jan. 8, 1981); *General Stores, Inc. v. City of Albuquerque*, No. 81-0027-M, Civil (D.N. Mex. March 23, 1981) (modified version of Model Act); *Weiler v. Carpenter*, 507 F. Supp. 837 (D.N. Mex. 1981); *Brache v. County of Westchester*, 507 F. Supp. 566 (S.D.N.Y. 1981) (modified version of Model Act in which substantive offense did not contain element of specific intent), *appeal docketed*, No. 81-7211 (2nd Cir. June 3, 1981). In *Lazy J., Ltd., Back Door Records*, and *Weiler*, the courts relied on the decision of the United States Court of Appeals in *Record Revolution No. 6, Inc. v. City of Parma*. Of course, that decision has been vacated by this Court and in any event the limited basis of the holding in that case renders the decision of little precedential value.

[5] *Michael A. Enloe v. Polk County*, Civ. 80-416-B (S.D. Iowa, filed Oct. 9, 1980); *George L. Powell, Jr. and Harpo's Music, Inc. v. City of Hopkins*, Civ. 3-80-511 (D. Minn., filed 1980); *Freak Imports v. Woods*, CA 4-80-249K (N.D. Texas, filed 1980); *Progressive Businessmen's Ass'n of Idaho, Inc. v. Kelly Pearce*, No. 71847 (4th Jud. Dist. of State of Idaho, Oct. 31, 1980), *appeal docketed*, No. 1392 (Sup. Ct. of Idaho); *Pennsylvania Accessories Trade Ass'n, Inc. v. Thornburgh*, No. 81-126 (M.D. Pa., filed Jan. 28, 1981); *Jack Garner v. Frank White*, No. LRC 81-57 (D. Ark., filed Feb. 13, 1981); *The Town Tobacconist v. Dazzalli*, No. C-2198 (Super. Ct. Ch. N.J. March 12, 1981), *appeal docketed*, No. A-2991-80-T2 (N.J. Super. Ct. App. Div., April 1, 1981); *Lady Ann's Oddities, Inc. v. Macy*, No. Civ. 81-500-BT (W.D. Okla., filed April 13, 1981); *Eucalyptus Records and Tapes, Inc. v. Dunlap*, No. 81-4742 (2nd Jud. Dist. Ct. of Nev., filed May 22, 1981); *Vana Murphy, dba The Store v. Scott Matheson*, No. NC-81-0058 (D. Utah, filed June 2, 1981); *Kansas Retail Trade Coop. v. Robert P. Stephen*, No. 81-1265 (D. Kan. filed June 24, 1981); *Eucalyptus Records & Tapes N.W., Inc. v. Charles R. James*, No. C-81-402 RJM (E.D. Wash., filed June 30, 1981).

[6] *See, e.g.*, statutes which have been held unconstitutional in *Geiger v. City of Eagan*, 618 F.2d 26 (8th Cir. 1980); *Record*

The Model Act consists basically of four essential components. First, there is a definition which provides that "'drug paraphernalia' means all equipment, products and materials of any kind which are used, intended for use, or designed for use" in connection with a controlled substance. Second, as a part of the definition, there is a list of examples of the many common forms of property that can be drug paraphernalia if "used, intended for use, or designed for use" to violate the illegal drug laws. Third, as a part of the definition, the Model Act names several relevant factors which "a court or other authority shall consider in addition to all other logically relevant factors," in determining whether the necessary criminal intent is present so as to constitute an object as drug paraphernalia. Finally, there are the substantive criminal offenses. The Model Act prohibits the use or possession with intent to use drug paraphernalia. It also defines the offense of delivery, possession with intent to deliver, or manufacture with intent to deliver drug paraphernalia, when the deliverer, possessor or manufacturer knows or reasonably should know that the drug paraphernalia will be used with controlled substances. It is further made unlawful for any person to place any advertisement knowing, or under circumstances where one should reasonably know, that the purpose of the advertisement is to promote the sale of objects designed or intended for use as drug paraphernalia.

Head Corp. v. Sachen, 498 F. Supp. 88 (E.D. Wis., 1980); *Gasser v. Morgan*, 498 F. Supp. 1154 (N.D. Ala. 1980); *Magnani v. City of Ames, Ia.*, 493 F. Supp. 1003 (S.D. Ia 1980); *Music Stop, Inc. v. City of Ferndale*, 488 F. Supp. 390 (E.D. Mich. 1980); *Knoedler v. Roxbury Township*, 485 F. Supp. 990 (D.N.J. 1980); *Record Museum v. Lawrence Township*, 481 F. Supp. 768 (D.N.J. 1979); *Bambu Sales, Inc. v. Gibson*, 474 F. Supp. 1297 (D.N.J 1979); *Weingart v. Oyster Bay*, No. 79-C-2932 (E.D.N.Y. Jan. 9, 1980); *Indiana Chapter, N.O.R.M.L., Inc. v. Sendak*, No. TH 75-142-C (S.D. Ind. Feb. 4, 1980); *Smith v. Roark*, No. 80-2110 (S.D.W. Va. May 13, 1981); *Florida Businessmen for Free Enterprise v. Pinellas County*, No. 80-482 Civ. -T-H (M.D. Fla. May 15, 1980).

As the Court of Appeals for the Seventh Circuit observed in the case at bar, 639 F.2d at 376, the Village of Hoffman Estates Ordinance No. 969-1978 differs substantially from the Model Act enacted by amici. The ordinance there is a licensing law and requires the retailers subject to licensure to file affidavits establishing that the applicant and all employees authorized to sell the items covered have never been convicted of a drug related offense. The ordinance also requires a licensee to keep records, available for police inspection, of the name and address of every purchaser for each item sold. The ordinance prohibits the sale or transfer of the items covered to minors. However, of significant importance to amici, the ordinance defines the items sought to be regulated as:

> "any item, effect, paraphernalia, accessory or thing which is *designed* or marketed *for use* with illegal cannibus or drugs." Ord. No. 969-1978, Sec. 1 (emphasis supplied).

The Seventh Circuit was unable to find the ordinance at issue in *Flipside* as carefully drafted and structured as is the Model Act. In the Model Act an essential element of proof in every case is a showing of specific intent of the person charged. The specific intent incorporated into the Model Act has two aspects: defining "drug paraphernalia" and delineating the elements of the substantive offense. *Mid-Atlantic Accessories Trade Ass'n v. Maryland, supra*, 500 F. Supp. at 844. Furthermore, the Model Act contains guidelines to be used in determining whether an object is drug paraphernalia. These are the critical differences between the Model Act and the ordinance at issue in *Flipside. Flipside, Etc. v. Village of Hoffman Estates, supra*, 639 F.2d at 376, 386.

The lower court decision of the Seventh Circuit in *Flipside* found this "designed for use" phrase in the context of the ordinance unconstitutionally vague in

violation of the Fourteenth Amendment to the United States Constitution.

Amici may thus be affected by this Court's decision in *Flipside*, since the Model Act contains the phrase "designed for use," albeit in a different context.

In the context of the Model Act, the majority of the lower courts have adopted a construction of the "designed for use" phrase which renders all the elements of the definition consistent with the recognized purposes and intent of the Act. These courts have rejected the contentions that the definition of drug paraphernalia is defective in failing to specify whose design is relevant and that "designed for use" refers to the physical attributes of an object rather than to the intent of the person charged with a violation. As the U.S. District Court for the District of Maryland reasoned in *Mid-Atlantic Accessories Trade Ass'n v. Maryland, supra:*

> "Such an interpretation amounts to a misreading of the statute. The person who must use an item, design it for use, or intend it for use with drugs in order for it to be drug paraphernalia, is the person charged with one of the Act's substantive violations. This interpretation, which is highly favorable to the accused in a criminal prosecution, is the one given to the same language by all the other courts that have had the Model Act before them. *See Florida Businessmen v. City of Hollywood, supra*, and the other cases cited herein. This is also the interpretation given to similar language in statutes designed to assist in the enforcement of the National Prohibition Act. *See, e.g., United States v. Brunett*, 53 F.2d 219 (W.D. Mo. 1931).
>
> This interpretation is also consistent with other provisions of the Act. As Judge Stapleton [of the U.S. District Court for the District of Delaware] pointed out in *Delaware Accessories, supra*, 497 F. Supp. at 292, the Section prohibiting the sale of drug paraphernalia . . . is phrased specifically in terms of the

use to which the *buyer* puts the item. The Section defining drug paraphernalia is not. Thus, when the drafters of the Act wished to make relevant the use to which a remote purchaser would put the item, they flatly said so. When they did not specifically mention the user's intent or future act, they quite obviously intended that such intent or future act was not relevant.

As Judge Stapleton also noted, the phrase 'designed for use' does not necessarily import objective factors into the statute. 497 F. Supp. at 921. 'Design' connotes an intentional act as well as an objective set of characteristics. When considered in the context of this statute, it is clear that it is the subjective, intentional sense in which 'designed' is used.

The fact that 'designed for use' and 'intended for use' are used in the disjunctive throughout the Act does not necessarily indicate that each of the two phrases means something entirely different. Rather, it is apparent from a reading of the Act in its entirety that all three verbs (i.e. used, designed and intended) were included in the definition of drug paraphernalia so that the terms would be applicable to all the kinds of conduct barred in the Act's substantive sections. A seller will 'intend' an item for use, while a manufacturer is more likely to 'design' an item for use, and a user will simply 'use' the item."

500 F. Supp. at 844. *Accord, The Casbah, Inc. v. Thone, supra,* Slip Op. at 13-14; *Heijira Corp. v. MacFarlane, supra,* Slip Op. at 24; *Brache v. County of Westchester, supra,* 507 F. Supp. at 577-578; *New England Accessories Trade Ass'n, Inc. v. Browne, supra,* 502 F. Supp. at 1251; *Tobacco Accessories and Novelty Craftsmen Merchants Ass'n v. Treen, supra,* 501 F. Supp. at 169-170; *Delaware Accessories Trade Ass'n v. Gebelein, supra,* 497 F. Supp. at 291-293; *New England Accessories Trade Ass'n, Inc. v. City of Nashua, supra,* slip Op. at 11; *Florida Businessmen for Free Enterprise v. City of Hollywood, supra,* Slip Op. at 7-8. Clearly, the teaching of this legion of decisions is that

where specific intent is contained in a statute and the focus is on the persons with the criminal state of mind, words such as "designed for use" are constitutional. *See Screws v. United States*, 325 U.S. 91, 103 (1945); *Boyce Motor Lines v. United States*, 342 U.S. 337, 342 (1952); *United States v. Price*, 383 U.S. 787, 806 n. 20 (1966).

Furthermore, there are many existing federal statutes regulating other types of paraphernalia (*e.g.*, implements of crime) which utilize the terms "designed for use" and/or "intended for use" and which have repeatedly withstood constitutional attack. (*See* Appendix B). The National Prohibition Act, ch. 85, 41 Stat. 313 (1919), for example, provided:

> "It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or recipe *advertised, designed, or intended* for use in the unlawful manufacture of intoxicating liquor." Title 2, Sec. 18 of the National Prohibition Act (emphasis supplied).

The federal decisions interpreting the language of this section and that of its successor, 26 U.S.C. § 5686 (1976), have consistently held when applying it to sellers that the terms "designed" and "intended for use" refer to the defendant charged, not to some hypothetical third party. *United States v. Brunett*, 53 F.2d 219, 230 (W.D. Mo. 1931). *See also Weinstein v. United States*, 293 F. 388, 389 (1st Cir. 1923); *Stroh Products v. Davis*, 8 F.2d 773, 776 (E.D. Mich. 1925); *Jones v. United States*, 11 F.2d 98, 99 (4th Cir.), *cert. denied*, 271 U.S. 682 (1926); *United States v. Nomel Products Co.*, 47 F.2d 575, 577 (2d Cir. 1931); *Israel v. United States*, 63 F.2d 345, 346 (3rd Cir. 1933); *United States v. 2265 One-Gallon Paraffined Tin Cans*, 260 F.2d 105, 108 (5th Cir. 1958); *Chapman v. United States*, 271 F.2d 593, 596 n. 3 (5th Cir. 1959).

In *Stroh Products Co. v. Davis, supra*, the court explained that the terms "designed" and "intended" were used in the National Prohibition Act to be alternatively applicable depending on the type of activity the defendant is charged with:

> "[W]hatever difference there may be in the meaning of the words 'designed' and 'intended' is fully explained by the multiplicity of subjects which the two adjectives serve; it being more natural to say that a still is designed for the manufacture of unlawful liquor, and that a preparation or compound is intended for use in the manufacture of unlawful liquor." 8 F.2d at 777.

Similarly, the use of the terms "used", "designed for use" and "intended for use" in the Model Act will vary as appropriate with the given defendant and the act for which he is charged; in each situation, the defendant's criminal intent is the focus.

Certainly the cases indicate that the language by itself is not vague. Further, when the "designed for use" language is coupled with a specific intent requirement, any vagueness problem is obviated. Thus, as amici assert, in the context of the Model Act the phrase "designed for use" is constitutional.

CONCLUSION

In reaching a decision in this case amici urge the Court to recognize that statutes which contain the term "designed for use" must be judged in the context in which the term is employed. In the example of the well-drafted and carefully articulated standards of the Model Act, "designed for use" is clearly constitutional.

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APPENDIX

MODEL DRUG PARAPHERNALIA ACT

Drafted by the

Drug Enforcement Administration

of the

United States Department of Justice

August, 1979

With

Prefatory Note and Comments

MODEL DRUG PARAPHERNALIA ACT

Prefatory Note

The Uniform Controlled Substances Act, drafted by the National Conference of Commissioners on Uniform State Laws, has been enacted by all but a handful of states. The Uniform Act does not control the manufacture, advertisement, sale or use of so-called "Drug Paraphernalia." Other state laws aimed at controlling Drug Paraphernalia are often too vaguely worded and too limited in coverage to withstand constitutional attack or to be very effective. As a result, the availability of Drug Paraphernalia has reached epidemic levels. An entire industry has developed which promotes, even glamorizes, the illegal use of drugs by adults and children alike. Sales of Drug Paraphernalia are reported as high as three billion dollars a year. What was a small phenomenon at the time the Uniform Act was drafted has now mushroomed into an industry so well-entrenched that it has its own trade magazines and associations.

This Model Act was drafted, at the request of state authorities, to enable states and local jurisdictions to cope with the paraphernalia problem. The Act takes the form of suggested amendments to the Uniform Controlled Substances Act. The Uniform Act is extremely well-organized. It

contains a definitional section, an offenses and penalties section, a civil forfeiture section, as well as miscellaneous sections on administration and enforcement. Instead of creating separate, independent paraphernalia laws, it seems desirable to control Drug Paraphernalia by amending existing sections of the Uniform Controlled Substances Act.

Article I provides a comprehensive definition of the term "Drug Paraphernalia" and includes particular descriptions of the most common forms of paraphernalia. Article I also outlines the more relevant factors a court or other authority should consider in determining whether an object comes within the definition.

Article II sets out four criminal offenses intended to prohibit the manufacture, advertisement, delivery or use of Drug Paraphernalia. The delivery of paraphernalia to a minor is made a special offense. Article II clearly defines what conduct is prohibited, and it specifies what criminal state of mind must accompany such conduct.

Article III provides for the civil seizure and forfeiture of Drug Paraphernalia. Civil forfeiture can be an effective deterrent, particularly to commercial suppliers whose capital is invested in inventory. Civil forfeiture can also be utilized in circumstances where criminal penalties seem unjustified.

ARTICLE I

(Definitions)

SECTION (insert designation of definitional section) of the Controlled Substances Act of this State is amended by adding the following after paragraph (insert designation of last definition in section):

"( ) The term 'Drug Paraphernalia' means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing,

compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act (meaning the Controlled Substances Act of this State). It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a concontrolled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuanna;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons, and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs;

(m) Ice pipes or chillers;

"In determining whether an object is Drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this Act;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this Act shall not prevent a finding that the object is intended for use, or designed for use as Drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community;

(14) Expert testimony concerning its use."

ARTICLE II

(Offenses and Penalties)

SECTION (designation of offenses and penalties section) of the Controlled Substances Act of this State is amended by adding the following after (designation of last substantive offense):

"SECTION (A) (Possession of Drug Paraphernalia)

It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than ( ), fined not more than ( ), or both."

SECTION (B) (Manufacture or Delivery of Drug Paraphernalia)

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act. Any person who violates this section is guilty of a crime and upon conviction may

be imprisoned for not more than ( ), fined not more than ( ), or both."

"SECTION (C) (Delivery of Drug Paraphernalia to a Minor)

Any person 18 years of age or over who violates Section (B) by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a special offense and upon conviction may be imprisoned for not more than ( ), fined not more than ( ), or both."

"SECTION (D) (Advertisement of Drug Paraphernalia)

It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than ( ), fined not more than ( ), or both."

ARTICLE III

(Civil Forfeiture)

SECTION (insert designation of civil forfeiture section) of the Controlled Substances Act of this State is amended to provide for the civil seizure and forfeiture of drug paraphernalia by adding the following after paragraph (insert designation of last category of forfeitable property):

"( ) all drug paraphernalia as defined by Section ( ) of this Act."

ARTICLE IV

(Severability)

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity

does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

COMMENT [ARTICLE I]

Drug paraphernalia laws are most often attacked because they are too vaguely worded. They seldom explain what is meant by the term paraphernalia. They do not indicate whether it is the use, or the possession, or the sale of paraphernalia that is prohibited. Moreover, they are usually silent on the criminal state of mind that must accompany the prohibited conduct. This deprives an individual of fair warning as to what the law forbids. It also vests too much discretion in authorities to determine what property and what activities are controlled.

DEFINITION OF DRUG PARAPHERNALIA

Article I of the Model Act, in contrast, defines "drug paraphernalia" as equipment, products, and materials used, intended for use, or designed for use, essentially, to produce, package, store, test or use illicit drugs. The words "equipment, products and materials" should be interpreted according to their ordinary or dictionary meanings. They can apply to many forms of movable, tangible property. Real property, conveyances, monies, documents and intangible property are, on the other hand, not meant to be included within these terms.

Although this definition may appear too general in its wording, or too broad in its scope, there are so many forms of drug paraphernalia that any attempt to define the term in more specific language would guarantee major loopholes in the Act's coverage. The courts have repeatedly recognized that there are practical limitations in drafting legislation. Where the subject matter of a statute does not lend itself to exact description, the use of general language does not make the statute unconstitutionally vague. *United States v. Petrillo,* 332 U.S. 1, 67 S. Ct. 1538 (1947).

And see *United States v. Ryan*, 284 U.S. 167, 52 S. Ct. 65 (1931).

To insure that innocently possessed objects are not classified as drug paraphernalia, Article I makes the knowledge or criminal intent of the person in control of an object a key element of the definition. Needless to say, inanimate objects are neither "good" nor "bad," neither "lawful" nor "unlawful." Inanimate objects do not commit crimes. But, when an object is controlled by people who use it illegally, or who intend to use it illegally, or who design or adapt it for illegal use, the object can be subject to control and the people subjected to prosecution. Article I requires, therefore, that an object be used, intended for use, or designed for use in connection with illicit drugs before it can be controlled as drug paraphernalia.

Hinging the definition of drug paraphernalia on a specific intent to violate, or to facilitate a violation of, the drug laws also provides "fair warning" to persons in possession of property potentially subject to this Act. A statute is not unconstitutionally vague, if it embodies a specific intent to violate the law. *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 72 S. Ct. 329 (1952); *Screws v. United States*, 325 U.S. 91, 65 S. Ct. 1031 (1945).

Consider the application of Article I to a spoon, a hypodermic syringe, and a length of surgical tubing. Each object has legitimate uses in the community. None is specifically designed for illegal use. Thus, when these objects are manufactured, delivered and possessed in lawful commerce, they are not considered paraphernalia. But, if these same objects are assembled and used by an addict to illegally melt heroin and inject it into his body, they become drug paraphernalia. As such they become forfeitable under Article III, and the addict becomes subject to prosecution under Section A of Article II.

Actual use of an object to produce, package, store, test or use illicit drugs need not always be shown. An object is considered to be drug paraphernalia whenever the person

in control intends it for use with illicit drugs. This intent may be a generalized one, not necessarily pinpointing a specific time and place of future use. See *Palmer v. State*, 14 Md. App. 159, 286 A.2d 572 (1972). It can be proved directly such as by admissions of the person in control, or indirectly through circumstantial evidence. It should be noted that the person in immediate control of an object need not intend to use it personally in connection with drugs. It is enough if he holds the object with the intent to make it available to persons whom he knows will use it illegally. See *United States v. 2265 One-Gallon Paraffined Tin Cans*, 260 F.2d 105 (5th Cir. 1958).

Objects whose sole, or at least dominant purpose is to produce, package, store, test or use illicit drugs are considered to be "designed" for such use. A rebuttable presumption exists that these objects are intended for use for the purpose for which they are designed. See *Israel v. United States*, 63 F.2d 345 (3rd Cir. 1933). As such, they are presumed to be drug paraphernalia. Isomerization devices designed for use in increasing the THC content of marihuana provide a good example.

COMMON FORMS OF DRUG PARAPHERNALIA

Article I includes a detailed description of common forms of property that can fall within the definition of drug paraphernalia if used, intended for use, or designed for use to violate the drug laws. This list is not intended to be inclusive. Several of these descriptions, such as "chillums" and "bongs," may seem foreign to the lay reader. Nevertheless, these terms are part of the jargon of the drug culture and are understood by both users and merchants of drug paraphernalia. They are not unconstitutionally vague. See *Hydgrade Provision Co. v. Sherman*, 266 U.S. 497, 45 S. Ct. 141 (1925).

RELEVANT FACTORS IN CLASSIFYING PARAPHERNALIA

In addition to defining drug paraphernalia and describing the common forms, Article I sets out some of the more relevant factors to consider in determining whether an

object is paraphernalia. The listing of these factors in the Model Act is not intended to be peremptory; a court or other authority is not obligated to hear evidence on, or to consider, every listed factor. Rather, the factors have been included to guide law enforcement officers, judges, and juries in their determination of what is controlled. Providing guidance on the practical application of the Act minimizes the risk of arbitrary and descriminatory enforcement, sometimes associated with even the most carefully drafted statutes. See *Interstate Circuit, Inc. v. City of Dallas,* 390 U.S. 676, 88 S. Ct. 1298 (1968).

Conversely, the listing of these factors is not meant to be inclusive. Any logically relevant factor may be considered.

COMMENT [ARTICLE II]

POSSESSION OF DRUG PARAPHERNALIA

Section A makes it a crime to: (i) possess an object; (ii) classifiable as drug paraphernalia; (iii) with the intent to use that object, essentially, to produce, package, store, test or use illicit drugs in violation of the Controlled Substances Act of the State. Section A does not make the mere possession of an object capable of use as drug paraphernalia a crime. Section A does not make the mere intent to violate the drug laws a crime. It is the possession of drug paraphernalia accompanied by an intent to use it to violate the drug laws that Section A forbids. Innocent citizens have nothing to fear from Section A.

It must be noted here that the activities of storing, testing and using illicit drugs are not in themselves violations of either the Uniform Controlled Substances Act or the federal Controlled Substances Act. But each activity necessarily includes the possession of illicit drugs, which is a violation of both laws.

MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA

Suppliers who furnish goods or services knowing they will be used to facilitate a crime are not immune from liability. There are no legal obstacles to punishing sup-

pliers who knowingly or recklessly aid their customers to commit crimes. This is true whether the objects or services are restricted, or peculiarly suited for illegal use, such as a still, a gun, morphine or stolen goods. See *Direct Sales Company* v. *United States*, 319 U.S. 703, 63 S. Ct. 1265 (1943); *Backun v. United States*, 112 F.2d 635 (4th Cir. 1940); *Israel v. United States*, 63 F.2d 345 (3rd Cir. 1933); *Weinstein v. United States*, 293 F. 388 (1 Cir. 1923); and *Commonwealth v. Stout*, 356 Mass. 237, 249 N.E.2d 12 (1969).

It is also true when the objects or services have widespread legitimate uses in the community, such as sugar, rye, yeast, grapejuice, rubbing alcohol or a telephone answering service. See *United States v. Ragland*, 306 F.2d 732 (4th Cir. 1962); *Chapman v. United States*, 271 F.2d 593 (5th Cir. 1959); *United Cigar Whelan Stores Corp. v. United States*, 113 F.2d 340 (9th Cir. 1940); *Vukich v. United States*, 28 F.2d 666 (9th Cir. 1928); *United States v. Burnett*, 53 F.2d 219 (W.D. Mo. 1931); and *People v. Lauria*, 251 Cal. App.2d. 471 (1967).

The reasonableness of this rule is clearly expressed in *Backun v. United States*:

> "To say that the sale of goods is a normally lawful transaction is beside the point. The seller may not ignore the purpose for which the purchase is made if he is advised of that purpose, or wash his hands of the aid that he has given the perpetrator of a felony by the plea that he has merely made a sale of merchandise. One who sells a gun to another knowing that he is buying it to commit a murder, would hardly escape conviction as an accessory to the murder by showing that he received full price for the gun; and no difference in principle can be drawn between such a case and any other case of a seller who knows that the purchaser intends to use the goods which he is purchasing in the commission of a felony. In any such case, not only does the act of the seller assist in the commission of the felony, but his will assents to its commission, since he could refuse to give the assist-

ance by refusing to make the sale" 112 F.2d 635 (4th Cir. (1940)).

There are courts which have hesitated to hold a supplier guilty of conspiracy with, or of aiding and abetting a buyer. See *United States v. Falcone*, 311 U.S. 205, 61 S. Ct. 204 (1940); and *United States v. Peoni*, 100 F.2d 401 (2 Cir. 1938). A careful reading of these decisions makes clear that they were based upon the court's unwillingness to hold a supplier *equally* responsible with a buyer based simply upon the supplier's knowledge that the buyer intended to commit a crime. At common law, the punishment is the same for the co-conspirator and the aider and abetter as it is for the actual perpetrator. Nothing in these cases suggests, however, that a supplier enjoys complete immunity from punishment, or that a state cannot make the conduct of the supplier a separate offense. See Note, *Falcone Revisited: The Criminality of Sales to an Illegal Enterprise*, 53 Columbia Law Rev. 228 (1953).

Section B makes it a crime to: (i) deliver, possess with intent to deliver, or manufacture with intent to deliver an object; (ii) classifiable as drug paraphernalia, (iii) knowing, or under circumstances where one reasonably should know, that it will be used, essentially, to produce, package, store, test or use illicit drugs in violation of the Controlled Substances Act of the State. The term "deliver" has the same basic meaning attributed to it by the Uniform Controlled Substances Act; namely, the actual, constructive, or attempted transfer from one person to another, whether or not there is an agency relationship. The term "manufacture," appearing in the phrase "manufacture with intent to deliver," is used in a general sense to express the entire process by which an object is made ready for sale in open commerce, including designing, fabricating, assembling, packaging and labeling. See *Danovitz v. United States*, 281 U.S. 389, 50 S. Ct. 344 (1930).

The knowledge requirement of Section B is satisfied when a supplier: (i) has actual knowledge an object will be

used as drug paraphernalia; (ii) is aware of a high probability an object will be used as drug paraphernalia; or (iii) is aware of facts and circumstances from which he should reasonably conclude there is a high probability an object will be used as drug paraphernalia. Section B requires a supplier of potential paraphernalia to exercise a reasonable amount of care. He need not undertake an investigation into the intentions of every buyer, but he is not free to ignore the circumstances of a transaction. Suppliers of objects capable of use as paraphernalia may not deliver them indiscriminately. Since each element of Section B must be proven beyond a reasonable doubt, legitimate, prudent suppliers will not be affected by this section.

ADVERTISEMENT OF DRUG PARAPHERNALIA

Section D makes it a crime to: (i) advertise an object; (ii) classifiable as drug paraphernalia; (iii) knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement is to promote the sale of the object for use, essentially, to produce, package, store, test or use illicit drugs.

Only printed advertisements promoting the sale of objects for use as paraphernalia are prohibited. The non-printed media, including radio and television, is not affected. Printed matter criticising the drug laws, glorifying the drug culture, glamorizing the use of drugs, or providing information or instructions on illicit drugs is not affected. The target of this Section is commercial advertising.

Unlike so-called "printer's ink" statutes, which exempt printers and publishers from their coverage, Section D contains no exemptions. It applies to anyone who prints or publishes paraphernalia advertisements, and to anyone who causes these advertisements to be printed or published. For this reason, it uses the general terms "any person" and "to place."

The knowledge requirement of Section D is satisfied when the person placing the advertisement: (i) has actual knowledge it is promoting the sale of objects for use as drug paraphernalia; (ii) is aware of a high probability it is promoting the sale of objects for use as drug paraphernalia; or (iii) is aware of facts and circumstances from which he should reasonably conclude there is a high probability the advertisement is promoting the sale of objects for use as drug paraphernalia. Whether an advertisement promotes the sale of objects for use as paraphernalia is to be determined from its content. Under Section D, one need not look beyond the face of the advertisement.

Section D does not compromise First Amendment rights. The sale of objects for use as drug paraphernalia is made illegal by Section B, and Section D simply prohibits advertisements promoting these sales. Commercial solicitation of illegal activities is not protected speech. *Pittsburgh Press Co. v. Pittsburgh Commission on Human Rights*, 413 U.S. 376, 93 S. Ct. 2553 (1973); and see *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 S. Ct. 1817 (1976).

COMMENT [ARTICLE III]

Civil forfeiture actions are directed against property and are totally independent of any criminal proceedings against individuals. Section 505 of the Uniform Controlled Substances Act provides for the seizure and civil forfeiture of: (1) illicit drugs; (2) equipment and materials used to make, deliver, import or export illicit drugs; (3) containers used to store illicit drugs; (4) conveyances involved in transporting illicit drugs; and (5) books, records and research connected with illicit drugs. States that have adopted Section 505 can seize these objects without making any compensation to the owners. The legality of civil forfeiture statutes, similar to 505, and their usefulness in helping deter crime, have been repeatedly recognized by virtually every state and federal court, including

the Supreme Court of the United States. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S. Ct. 2080 (1974).

Article III extends the civil forfeiture section of the Uniform Act to include drug paraphernalia. This allows states to keep and destroy drug paraphernalia, rather than returning it after criminal proceedings have ended. It also allows states to keep drug paraphernalia seized during an investigation, in cases where criminal proceedings are not initiated. Finally, since the standard of proof in a civil forfeiture action is simply "probable cause," or "reasonable cause," rather than "proof beyond a reasonable doubt," Article III permits states to seize and forfeit drug paraphernalia in circumstances where an arrest might not seem justified. For example, an officer who encounters a minor in possession of a hypodermic syringe, or in possession of a bong (a device especially designed for smoking marihuana), has reasonable cause to believe these objects are intended for use to introduce illicit drugs into the human body. Subjecting drug paraphernalia to civil forfeiture permits the officer to seize these objects, though he decides not to arrest the minor.

Civil forfeiture can also be an effective deterrent to commercial suppliers. See *Utley Wholesale Company v. United States*, 308 F.2d 157 (5th Cir. 1962); *United States v. 2265 One-Gallon Paraffined Tin Cans*, 260 F.2d 105 (5th Cir. 1958); *United States v. 1,922 Assorted Firearms, Etc.*, 330 F. Supp. 635 (ED Mo. 1971); *United States v. 600 Bags of Southcoast Jurbinado Brand Sugar*, 225 F. Supp. 705 (WD La. 1964); *Vinto Products Co. v. Goddard*, 43 F.2d 399 (D Minn. 1930); and *United States v. Roitman*, 36 F.2d 86 (ND Ill. 1929).

APPENDIX B

Federal statutes containing the terms "designed for use" and/or "intended for use" include:

7 U.S.C. § 136 (1976) — Environmental Pesticide Control Act — definitions.

7 U.S.C. § 2131 (1976) — Animal Welfare Act.

15 U.S.C. § 56 (1976) — False advertising.

15 U.S.C. § 70 (1976) — Textile Fiber Products Identification Act — definitions.

15 U.S.C. § 1171 (1976) — Transportation of Gambling Devices; *United States v. Various Gambling Devices*, 478 F.2d 1194, 1198 (5th Cir. 1973); *United States v. H.M. Branson Distributing Co.*, 398 F.2d 929, 934 (6th Cir. 1968), both holding that the definition of 'gambling device' is not constitutionally vague.

15 U.S.C. § 1191 (1976) — Flammable Fabrics Act.

15 U.S.C. § 1262(e) (1976) — Regulation of hazardous toys intended for use by children. *See Toy Mfrs. of America v. Consumer Products Safety Commission*, 630 F.2d 70, 77-78 (2d Cir. 1980).

15 U.S.C. § 1391 (1976) — Motor Vehicle Safety Standards.

17 U.S.C. § 509 (Supp. 1979) — Seizure and forfeiture provision for copyright infringement.

18 U.S.C. § 486 (1976) — Uttering coins.

18 U.S.C. § 492 (1976) — Forfeiture of counterfeit paraphernalia.

18 U.S.C. § 921 (1976) — Gun Control Act of 1968.

18 U.S.C. § 957 (1976) — Possession of property in and of foreign government.

18 U.S.C. § 1706 (1976) — Injury to things used or designed for use in conveyance of the mail.

18 U.S.C. § 1792 (1976) — Mutiny, riot, dangerous instrumentalities prohibited in federal prisons; *United States v. Hamilton*, 626 F.2d 348, 349 (4th Cir.),

cert. denied, 449 U.S. 902, (1980) (whether an article is a weapon or "thing designed to kill, injure, or disable" "depends not only upon the nature of the article but the intent with which it is used or conveyed by the individual.").

18 U.S.C. § 1953(a) (1976 & Supp. 1979) — Interstate transportation of wagering paraphernalia.

18 U.S.C. § 2512 (1976) — Manufacture, distribution, possession, and advertising of wire or oral communicating intercepting devices prohibited.

18 U.S.C. Appendix (Supp. 1979) — Federal Rules of Criminal Procedure 41(b) — "A warrant may be issued under this rule to search for and seize any . . . (3) property designed or intended for use or which is or has been used as a means of committing a criminal offense."

21 U.S.C. § 151 (1976) — Preparation and sale of worthless or harmless products for domestic animals prohibited.

21 U.S.C. § 209 (1976) — Labeling and sale of poisons.

21 U.S.C. § 321(g)(1) (1976) — Federal Food, Drug, and Cosmetic Act — definition of drug; *National Nutritional Foods Ass'n v. Mathews*, 557 F.2d 325, 333-34 (2d Cir. 1977) (Phrase "intended for use" refers to the intent of the vendor-manufacturer, the person charged or whose property is affected).

21 U.S.C. § 881 (1976 & Supp. 1978) — Forfeiture of property.

26 U.S.C. § 5301 (1976 & Supp. 1979) — Regulation of traffic in containers of distilled spirits.

26 U.S.C. § 5763 (1976) — Forfeiture of tobacco paraphernalia.

26 U.S.C. § 5845 (1976) — Definitions of machine gun and destructive devices; *United States v. Markley*, 567 F.2d 523 (1st Cir. 1977), *cert. denied*, 425 U.S. 951 (1978); *United States v. Morningstar*, 456 F.2d 278

(4th Cir. 1971), *cert. denied*, 409 U.S. 896 (1972); *United States v. Campbell*, 427 F.2d 892 (5th Cir. 1970), *cert. denied*, 402 U.S. 975 (1971) (all holding that the definition of "destructive device" is not unconstitutionally vague).

33 U.S.C. § 1502 (1976) — Deepwater Ports.

49 U.S.C. § 1807 (1976) -- Transportation of radioactive materials on passenger-carrying aircraft.